COMPT 78-0285

OLC-78-0399/38

22 MAR 1978

Pro Legislation

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MEMORANDUM FOR: [redacted]
Assistant Legislative Counsel

THROUGH : Comptroller

SUBJECT : S.2525 - Proposed Intelligence Charter Legislation - Title I Issues Paper

REFERENCE : Your Multiple Addressee Memorandum dated 17 March 1978, Same Subject (OLC 78-0399/33)

1. One of the earlier issues papers raised a question about whether CIA should have the authority to conduct counterterrorism activities in addition to collecting and analyzing counterterrorism intelligence. We did not offer comment at the time, feeling that it might better be left to those whose responsibilities would be most directly affected. I now note that there is no counterterrorism issue identified in your paper with respect to Title I, and to the extent that the definition of a counterterrorism carries over to Title IV it may be appropriate to offer an observation or two here. Even though it is not directly within the purview of this Office, there may be cause for concern with that part of the definition in Section 104(7)(C) that says counterterrorism activity means "any activity undertaken by an entity of the intelligence community intended to protect against an international terrorist activity." While there are a wide variety of activities that might be undertaken, there is nevertheless an implication in the language of the definition that some physical action might be contemplated. The only reason for charging CIA with such a role would be the need to conduct the activity clandestinely and we see no way that counterterrorist activity can be so undertaken. In my view, terrorist activity can only be counteracted on foreign soil by indigenous military or police forces. If vital U.S. interests are at stake in a foreign country, they can only be protected through diplomatic pressures and negotiation. We might have to send in the Marines, but it would have to be an overt action, preferably diplomatically sanctioned. Neither CIA nor any other entity of the Intelligence Community should be charged with responsibility for taking action to protect against international terrorist activity. In the U.S. the FBI has a role, but as an arm of the Department of Justice, not as an element of the Intelligence Community. We see no reason not to collect and analyze information, but physical action is not appropriate. To the extent that physical action may be contemplated, the definition requires clarification.

2. The following comments are keyed to issues as you have identified them.

10. Section 104(17). The thought occurs that there should be included in the definition of intelligence methods some way of ensuring protection for supporting services. Methods of procurement, accounting, communications, training, recruitment, and virtually all facets of the activities of the Administration Directorate have attributes designed specifically to meet requirements of protection. They become intrinsic to intelligence methodologies, and it would be useful if the definition included some explicit language to ensure their legitimate protection.

16. Section 111(a) includes the language "under the direction and control of the National Security Council." We addressed this point in our memorandum about Title IV. The same comments apply here.

19. Section 113(a). It has been our impression that the Director does not want a separate O/DNI. If that decision has been overtaken, or if the issue as you define it is intended as a fall back, your concern that the O/DNI be an "independent establishment" is valid, but it carries with it the foreboding that as such it will require a separate appropriation. Should the Congress see fit to treat the O/DNI as it has treated the IC Staff in the last couple of years, it might also become an open appropriation and a further erosion of the protective mantle we have struggled to maintain around intelligence budgets. Unfortunately, I see no easy fix. If there must be an O/DNI, and it must be a separate entity, it follows that there will be a separate appropriation and life for the accountants and budgeteers will become that much more complicated.

Section 113(g) is unnecessary management by legislation. Establishment of a succession hierarchy is normal management practice. It should not be necessary to legislate it.

38. We do not necessarily accept the premise that reprogramming authority should be legislated, but since it is included in E.O. 12036, it probably is not worth a fuss. The new paragraph you suggest, however, is not acceptable. It would seem to require DNI approval and notification to Congress of every reprogramming action, and neither of those conditions is workable. We must have the flexibility to reprogram funds internally to meet essential requirements as they occur without seeking DNI (DCI) approval in every case. Resource management would bog down hopelessly if we had to go to the DCI for approval and notify the Congress of every action. Perhaps the following will do:

"(5) The Director shall have full and exclusive authority to review and approve reprogramming of national intelligence budget funds in accordance with guidelines established in consultation with the Office of Management and Budget. Committees (Oversight and Appropriations)

shall be notified of reprogramming actions in accordance with criteria as agreed with the Committees." The current criteria with which we comply require committee approval of certain reprogramming actions and notification of others. Under no circumstances should there be any attempt to write these criteria into law. And we would prefer to leave Section 121(c) as it is.

39. Section 122(a) We will defer to the Director of Finance and the DDA on the question of multi-year authorizations, but we are not certain a multi-year authorization necessarily means that an appropriation must be considered, and held, available for more than one year. It has been my understanding, perhaps wrong, that we have historically considered that we had a "no-year" authorization but nevertheless treated our appropriation as one year funds. It is not clear to me why we would interpret Section 122 any differently.

41. Section 122(c) We cannot foresee any reason for the Director to have Confidential Funds authority as DNI.

3. We support the comments in your paper about Section 123 and Section 153, but wonder whether there is a need to specify that the provisions of Section 153 are intended to cover audit reports prepared by the Comptroller General.

4. We have no comments about other issues.

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